

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

James Edward Thornberg,

Defendant.

ORDER

Criminal Case No. 10-80 ADM/JSM

Civil Case No. 14-739 ADM

Robert M. Lewis, Esq., United States Attorney's Office, Minneapolis, MN, on behalf of Plaintiff.

James Edward Thornberg, pro se.

This matter is before the undersigned United States District Judge for consideration of Defendant James Edward Thornberg's "Rebuttal to the Government's Response" [Docket No. 128].

On March 14, 2014, Thornberg submitted a Motion to Vacate his sentence pursuant to 28 U.S.C. § 2255 [Docket No. 118]. The Court required a response from the Government, which was filed April 30, 2014 [Docket No. 125]. On May 9, 2014, the Court denied Thornberg's motion to vacate. Mem. Opinion & Order [Docket No. 126]. On May 19, 2014, the Court received a memorandum from Thornberg which outlines his objections to the Government's Response.

The rules governing Section 2255 proceedings do not give the Defendant an automatic right to reply to the Government's Response. See U.S.C.S. Rules of Criminal Procedure, Section 2255 Rules, Rule 5(d); see also United States v. McElrath, No. 3-235, 2009 U.S. Dist. LEXIS 49134, at *5-6 (D. Minn. June 11, 2009); United States v. Crittenton, Crim. No. 03-349-2, 2008 U.S. Dist. LEXIS 8940, at *2 (E.D. Pa. Feb. 7, 2008) ("No court has held that Rule 5(d) [of the

Rules Governing Section 2255 Proceedings] entitles a petitioner to submit a reply under all circumstances. When a court does not request, permit, or require the additional argument that would be contained in a reply brief, § 2255 petitioners are not prejudiced by denial of an opportunity to file such a brief.”).

Thornberg did not request an opportunity to reply to the Government’s Response, and the Court did not request or require additional argument. Therefore, Defendant James Edward Thornberg’s “Rebuttal to the Government’s Response” [Docket No. 128] is not considered.¹

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: June 3, 2014.

¹ A brief examination of the memorandum reveals no new arguments or evidence to justify considering Thornberg’s submission as a motion to reconsider or as a second or successive motion under Section 2255. If Thornberg wishes to make a successive motion under Section 2255, Thornberg must first obtain certification from the Eighth Circuit Court of Appeals. See United States v. Olson, No. 4-398, 2013 U.S. Dist. LEXIS 114409 (D. Minn. Aug. 13, 2013).